

STATE OF MICHIGAN
COURT OF APPEALS

TRACHELLE C. YOUNG,

Plaintiff-Appellant,

v

FLINT CITY COUNCIL,

Defendant-Appellee.

UNPUBLISHED

December 28, 2006

No. 263310

Genesee Circuit Court

LC No. 05-080930-CZ

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff, Trachelle C. Young, appeals as of right an order entering declaratory judgment in favor of defendant, Flint City Council. We reverse and remand.

Plaintiff is the Chief Legal Officer (CLO) of the City of Flint.¹ Plaintiff asserts that the Flint City Charter requires that the CLO be the sole individual authorized to make decisions with respect to the scope and cost of the legal services provided to the City. Plaintiff argues that the Flint Charter grants the CLO sole authority to direct all legal affairs in the city, including the appointment of outside legal counsel. Plaintiff's complaint alleged that the Flint City Council had, on three occasions, retained legal counsel without the approval or direction of plaintiff, in violation of the Flint Charter.

Defendant argued, and the trial court agreed, that where the CLO sues the City Council on behalf of the Mayor or some other entity within the City, a conflict of interest is created. The core of the argument is that the CLO cannot represent or direct the representation of the City if the CLO is bringing suit against the City, as such a situation would put the CLO effectively on both sides of the litigation. The trial court summarized the situation and its ruling as follows:

¹ According to Flint Charter § 4-601, "the City" refers to the Mayor (Executive Branch) and the City Council (Legislative Branch) collectively, as the co-equal branches of the city government. Therefore, plaintiff's obligations are to both the Mayor and the City Council, as they together comprise the "City."

Ms. Young suggests that, in her role as Chief Legal Officer, she is obliged to direct the management of all legal matters; and a few weeks ago Ms. Young suggested that means she can appoint the lawyer who represents the City Council when she sues the City Council and then she can determine whether the payment method is reasonable.

Even to go that far is a conflict of interest under the Michigan Rules of Professional Conduct. The City Charter cannot stand in contradiction to state law. The Supreme Court enforces the Michigan Rules of Professional Conduct as a state mandate; therefore, this portion of the Charter, which places the Chief Legal Officer in conflict of interest, which suggests that she can manage the defense of the City Council when they're being sued by the Mayor is in conflict, is in contradiction and oppose state mandate. So, when that happens, if the City Council is sued by some other body, agency or person inside the city, they are entitled to their own independent counsel which they can hire at a rate that they determine . .

While we agree that there is the appearance of conflict and perhaps even impropriety in the idea that the CLO may exercise the authority to manage the legal affairs of the City Council by appointing independent legal counsel even when another entity within the City has taken a position adverse to the City Council in litigation, we cannot say that this falls within the scope of the Michigan Rules of Professional Conduct (MRPC).

The MRPC were the basis for the trial court's decision. "The application of 'ethical norms' to a decision whether to disqualify counsel is reviewed de novo." *Rymal v Baergen*, 262 Mich App 274, 317; 686 NW2d 241 (2004), citing *General Mill Supply Co v SCA Services, Inc*, 697 F2d 704, 711 (CA 6, 1982). "The conclusion that a conflict of interest exists is a question of fact and is reviewed under the clearly erroneous standard." *Camden v Kaufman*, 240 Mich App 389, 399; 613 NW2d 335 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Plaintiff argues on appeal that she can perform her duties as CLO under the Flint Charter without violating the MRPC, even in situations where one entity within the City is suing another. Plaintiff asserts that by choosing independent legal counsel for the parties, she avoids the conflict of interest that inheres in playing both sides of the contest. We agree that such a solution avoids a conflict of interest as defined in the MRPC.

The Flint Charter provides the specific duties of the CLO in §§ 4-601 through 4-606.² Provisions pertinent to this litigation include that that the CLO: "shall direct the legal affairs of

² The Flint Charter contains few exceptions to the CLO's power to direct the legal affairs of the city. For instance, "[n]otwithstanding the above, the Board of Hospital Managers may contract for legal services and legal representation." Flint Charter § 4-601(D). Further, the Charter
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the City and shall appoint all assistants,” § 4-601(A); “shall be the attorney for the City and shall direct the management of all legal matters in which the City is interested,” § 4-601(B); “shall, either personally or through assistants, represent the interests of the City in all actions or proceedings by or against the City or its officers and employees,” § 4-601(C). The Charter also provides that “[a]ll contracts, bonds or legal documents in which the City is concerned shall be prepared by or submitted to the Chief Legal Officer for approval; and the officer shall keep a proper registry of all contracts bonds and legal documents.” § 4-602. The Charter also empowers the CLO to prosecute “penal matters.” § 4-606.

With respect to conflict of interest, MRPC 1.7(a) states:

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

“It is a well-established ethical principle that ‘an attorney owes undivided allegiance to a client and usually may not represent parties on both sides of a dispute.’” *Evans & Luptak v Lizza*, 251 Mich App 187, 197; 650 NW2d 364 (2002), quoting *Barkley v Detroit*, 204 Mich App 194, 203; 514 NW2d 242 (1994). Further, “under no circumstances could a lawyer properly represent both the plaintiff and the defendant in contested litigation.” *Evans, supra* at 197, quoting *Friedman v Dozor*, 412 Mich 1, 24 n 10; 312 NW2d 585 (1981).

As CLO, plaintiff’s obligations include directing the legal affairs of the City, appointing all assistants, serving as the attorney for the City, directing the management of all legal matters in which the City is interested, and, either personally or through assistants, representing the interests of the City in all actions or proceedings by or against the City or its officers and employees. At issue here is what happens to those obligations when the two principal entities within the City, the Mayor and the City Council, end up on opposite sides in litigation. Per MRPC 1.13, plaintiff represents the City itself, as an organization, rather than any of its component parts. Reading the Rules and the Charter together, logically plaintiff cannot personally represent one entity within the City against another, because then she would be acting in a fashion adverse to the interests of the other. Likewise, she cannot represent both parties. However, plaintiff is still bound by her obligation to direct the legal affairs of the City, meaning both the Mayor and the Council. The clear alternative is to select and retain independent legal counsel for both parties. Only by declining to personally represent either party, while in good faith choosing counsel for each can plaintiff comply with both the MRPC and the Charter.

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allows the City Council to retain “independent legal services when it deems it necessary and proper” to “prepare, or assist in preparing, any ordinance or resolution for introduction before the City Council.” Flint Charter, §§ 4-603(A) and 4-603(B).

The Flint Charter specifically provides that plaintiff is the individual responsible for directing the legal affairs of the city. Flint Charter § 4-601. The Flint Charter does not permit defendant to appoint its own legal counsel. The circuit court's ruling prevented plaintiff from representing the Flint City Council in three specific instances, notwithstanding the language of the Flint Charter. Because there is an alternative that allows plaintiff to comply with the dictates of the Charter without violating the MRPC, we find that the circuit court erred.³ The CLO has sole authority to direct the legal affairs of the City, whether only one party to litigation is an entity within the City, or two entities within the City are adverse parties in litigation.

Plaintiff also argues on appeal that the MRPC do not have the force of substantive law, and therefore, cannot be used as a defense to her allegations against defendant. Because we find that plaintiff's conduct did not create a conflict of interest as covered by the MRPC, this argument is irrelevant to the outcome of this matter. We note, briefly, that plaintiff's argument was rejected by this court in *Evans, supra*. In *Evans, supra*, the plaintiff argued that "the Michigan Rules of Professional Conduct are not rules of substantive law and therefore are inapplicable in court-proceedings." *Evans, supra* at 193-194 (internal quotations omitted). Citing an abundance of authority, the *Evans* Court ruled the MRPC were indeed judicially enforceable. *Evans, supra* at 194-197.

Reversed and remanded for the circuit court to grant plaintiff a declaratory judgment stating that the CLO has sole authority to appoint legal counsel for parties governed by the Flint Charter. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Janet T. Neff
/s/ Jessica R. Cooper

³ It is a long-accepted principle of statutory construction that "[s]tatutes which may appear to conflict are to be read together and reconciled, if possible." *Cameron v Auto Club Ins Ass'n*, 718 NW2d 784; 718 NW2d 784 (2006) (citation omitted).